

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	

**COMMENTS OF CENTURYLINK**

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## **SUMMARY**

The Commission's Notice of Proposed Rulemaking raises a broad collection of questions, proposals, and ideas about potential changes to the Universal Service Fund's Schools and Libraries program ("E-rate"). CenturyLink welcomes the Commission's review of these issues and provides its comments on the NPRM in this submission. Overall, CenturyLink suggests that the Commission adhere to the following principles in any review or update of the E-rate program.

First, the Commission should not inadvertently undermine the existing program on which schools and libraries have come to rely. It should not discontinue E-rate support for voice services, nor limit support to voice that is bundled with broadband services. Although some services or products for which there is little demand may appropriately be discontinued, the Commission should not make abrupt changes to the existing E-rate program.

Second, the Commission should ensure school and library administrators, not Commission or Universal Service Administrative Company ("USAC") representatives, determine what bandwidth, technology, or service is most suited to their needs. Enhancing connectivity is a fine goal, but the Commission need not dictate particular bandwidth, service technology, or target dates. The Commission should consider extending E-rate eligibility to cloud data storage as a means for reducing costs for E-rate applicants as they expand their use of capacity-intensive applications.

Third, the Commission should be mindful of the impact that Universal Service Fund ("USF") assessments have on contributors and consumers. Although at this time CenturyLink takes no position on increasing E-rate program funding, the Commission should ensure policy goals do not unreasonably burden consumers nor affect some service providers more than others.

That also means the distinction between regulatory classifications of “telecommunications” and “information services” must be maintained in the program, so that providers are licensed carriers and USF contributors if they are to be eligible telecommunications service providers.

Fourth, the Commission should be especially careful not to undermine the fairness and efficiency of the competitive bidding process. It should be wary of shortcuts in the bid process, and should not discriminate in policy but observe technologically neutrality. Bulk buying arrangements -- like consortia formed for joint purchasing of services through larger volume contracts -- can often deliver cost savings. But the Commission should not favor consortia or publicly-owned organizations that operate fiber networks over commercially provided service. Moreover, publicly-owned or -operated fiber ultimately is rarely as reliable or cost effective as commercial alternatives.

Fifth, the Commission should strive to genuinely simplify E-rate administration. That goal includes reducing regulatory burdens and requirements, being mindful of the costs that administrative and regulatory burdens impose on applicants and service providers, and minimizing interference in the customer relationship. For example, it should not be imposing new requirements, like ten-year document retention rules, which add costs for little benefit. It should keep certification requirements to a reasonable minimum and allow parties to determine appropriate representatives to sign. It should streamline funds disbursement while taking service providers out of their current, unnatural middleman role.

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**COMMENTS OF CENTURYLINK**

CenturyLink appreciates the opportunity to comment on issues raised in the Commission’s exhaustive review and proposed update of the E-rate program.<sup>1</sup> The third largest telecommunications company in the nation, CenturyLink provides data, voice, and managed services to customers nationwide. It is a leader in network services, cloud infrastructure, and hosted IT solutions. Its incumbent local exchange carrier (“ILEC”) network covers portions of 37 states, where it provides residential and business voice and broadband services to urban, suburban, and rural communities. CenturyLink supports the goals of the E-rate program and is proud of its role as a major provider of services to K-12 schools and public libraries in the many communities that it serves.

**I. NPRM INTRODUCTION (§§ 1-12).**

Over the last fifteen years, the E-rate program has played a major role in expanding broadband availability at schools and libraries. The program has succeeded in encouraging broadband in the classroom, introducing school children and families to many of the benefits of the digital age. The program certainly has been popular with school and library authorities, and they have come to rely on E-rate support.

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<sup>1</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC No. 13-100 (rel. July 23, 2013) (“NPRM”).

Naturally, E-rate applicants and education advocates always would like to see more funding for the program. The challenges for the Commission, in any revisions to the E-rate program, are to avoid undermining the existing program; to resist dictating bandwidth, technology, or service choice to school or library administrators; to be sensitive to the impact that USF assessments have on contributors and consumers; to preserve the fairness and efficiency of the competitive bidding process; and to simplify E-rate administration and reduce regulatory burdens.

## **II. GOALS AND MEASURES (§§ 13-55).**

### **A. Ensuring Schools and Libraries have affordable access to 21st century broadband that supports digital learning. (§§ 17-40)**

The NPRM asks whether the National Broadband Map could be used to identify where broadband services are available, and in particular where high capacity broadband facilities are available. (§ 37) Actually, the National Broadband Map is not a wholly reliable indicator of where broadband services or facilities are available to schools and libraries. The map is focused on mass market retail services, and even there it is always lagging actual deployment, because service providers are continually extending and upgrading network. More importantly, however, the map tells nothing about who is willing to deploy to bring high connectivity services to a particular school or library that may seek bids for service, much less to all schools or libraries within a district.

The lack of high capacity service shown at any particular location in the National Broadband Map does not necessarily mean that no service provider is willing to step forward to construct those facilities. Although costs vary depending on many factors, and some rural or insular areas may be uneconomic to serve for any customer, schools and libraries often can be

large enough aggregations of demand to justify the construction of new facilities, the upgrade of existing broadband facilities, or extension of network from adjacent areas.

CenturyLink takes no position at this time on the NPRM's proposal for 100 Mbps per 1,000 students and a goal of 1 Gbps. CenturyLink serves many schools today at 100 Mbps or higher bandwidth, including some with significant rural area. CenturyLink proudly serves entire districts with 100 Mbps per school, and it already has districts with 1 Gbps per school. Ultimately, however, we believe educators and library administrators generally are in the best position to determine what connectivity and networking facilities make sense for their teachers', students,' and community patrons' needs.<sup>2</sup>

**B. Maximizing the cost-effectiveness of E-rate funds. (§§ 41-44)**

The Commission should not set network performance requirements, nor should it be attempting to measure broadband performance in the E-rate program. (§ 28) Likewise, the Commission should not require E-rate applicants to have dedicated equipment measuring performance to and within each of their buildings. (§ 34) School and library administrators are in a position to assess the quality of the services they receive and the equipment they procure. In addition to observing performance firsthand, there are many resources available for school and library administrators to assess and monitor performance. Imposing a performance assessment program on schools and libraries would add administrative burdens and operational costs on applicants, consuming resources while providing minimal benefit to the program or the public.

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<sup>2</sup> Even schools with the 1 Gbps bandwidth in place today typically have lower bandwidth at elementary schools than at high schools, for example, in line with smaller school size and lower utilization. Libraries' bandwidth needs vary widely with the size of their communities. Administrators need discretion to determine the appropriate allocation of resources within their districts and within and among their schools.



The Commission and USAC should manage the E-rate program but leave provisioning of services to providers.

Adopting rules or procedures to measure compliance with the Lowest Corresponding Price (“LCP”) rule is also unnecessary.<sup>3</sup> (§ 39) It is unclear how the Commission or USAC could measure compliance. Nor is there anything in the record to suggest there is any LCP compliance problem. Schools and libraries enjoy pricing as good as or better than any other similarly situated customer for like services. The market for E-rate services is highly competitive, and schools and libraries are not incompetent purchasers. Even in those instances where a Form 470 receives no formal bid, ILECs, other carriers, and cable companies have tariffed or publicly scheduled service offerings available. The industry has performed well and delivers quality and value. Costs per megabit are declining. The LCP rule today is unnecessary, if indeed it ever was necessary.

CenturyLink agrees with the NPRM that the Commission has a responsibility to be a prudent guardian of the public’s resources. (§ 42) The Act expressly requires any E-rate support to schools and libraries to be economically reasonable.<sup>4</sup> Assessing what is reasonable support, however, necessarily depends on the particular circumstances of the applicant. We believe the Commission can meet its obligation of financial prudence simply by maintaining its rules that cost must be the primary factor in any E-rate procurement decisions.

### **C. Streamlining Administration of the E-rate Program. (§§ 45-51)**

CenturyLink heartily supports the goal of streamlining E-rate program administration. (§ 45) Certainly, the Commission should take steps to reduce the administrative costs and

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<sup>3</sup> 47 C.F.R. §§ 54.500(f), 54.511(b).

<sup>4</sup> 47 U.S.C. § 254(h)(2)(A).

burdens imposed on applicants and service providers. Additional administrative burdens imposed on USAC also add to costs for the E-rate program.

Many proposals in the NPRM, however, would serve only to increase administrative burdens all around. For example, the NPRM proposes new or additional rules for testing and measurement, record-keeping, audits, and certifications. All of these proposals would have costs, either to applicants, service providers, or through USAC to the E-rate program itself.

The Commission's priority should be making E-rate administration cost effective, by keeping such regulatory requirements to a minimum.

### **III. ENSURING SCHOOLS AND LIBRARIES HAVE AFFORDABLE ACCESS TO 21<sup>ST</sup> CENTURY BROADBAND.**

#### **A. Focusing E-rate Funds on Supporting Broadband to and within Schools and Libraries. (§§ 65-114)**

##### **1. Funding for Broadband Connections. (§§ 65-90)**

Schools and libraries -- and, in some instances, services providers -- already have significant sunk investment in facilities. The Commission should be very wary about redirecting funding to what it perceives to be the best technological architectures. Fiber is ordinarily preferable, but it is not the only technological option. Smaller schools and many libraries may not need the bandwidth associated with fiber and may be adequately provisioned with existing copper facilities. Small, remote facilities may be adequately and more sensibly served by microwave. A service provider can explain the benefits of the technological options available.

Sometimes, however, what would seem most cost effective is not. Dark fiber is generally not cost effective or efficient.<sup>5</sup> Dark fiber requires considerable maintenance and operation costs

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<sup>5</sup> Major service providers, including CenturyLink, believe the Commission was mistaken in adding dark fiber to the Eligible Services List. Even so, the Wireline Competition Bureau took steps to outline the limits of dark fiber eligibility. These included clarifying that off-premises special construction charges for leased dark fiber are ineligible, and reiterating that applicants

that commonly are overlooked or underestimated. Dark fiber also undermines national broadband policy. It takes traffic away from actual or potential last mile facilities of broadband service providers, which frustrates their ability to utilize schools as anchor tenants for broadband investment in surrounding communities, especially in low density areas.

The cost to deploy fiber varies widely, based on geography, topology, geology, density, and costs of rights of way. (¶ 74) As a rule, the best bet is to have providers utilize their own fiber rather than to have schools and libraries lock up capital in dark fiber IRUs or leases. Service providers, operating in a competitive market, are consistently more efficient and provide greater cost effectiveness. Often, applicants securing dark fiber end up with more capacity than is justified, or may improperly warehouse spare capacity for possible future use,<sup>6</sup> and thus end up incurring higher cost than if they secured service from providers.

If dark or lit fiber is supported, it should remain Priority 2, and costs should be spread over a period longer than the three years proposed in the NPRM. (¶¶ 72, 73) E-rate funding should not encompass lateral fiber builds from middle mile networks. (¶ 75) It is more cost effective to secure services from an experienced provider that can provision efficiently and manage and operate reliability and cost effectively. The Commission should be technologically neutral, and it should not be attempting to spur fiber or other broadband deployments through dedicated funding.

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may not “use E-rate discounts to acquire unneeded capacity or warehouse dark fiber for future use.” Public Notice, *Wireline Competition Bureau Provides Guidance Following Schools and Libraries Universal Service Support Program Sixth Report and Order*, 25 FCC Rcd 17332, 17337 (2010); Public Notice – Schools and Libraries Universal Service Support Mechanism Eligible Services List for Funding Year 2012, DA 12-1052 (rel. July 5, 2012), Attachment at 7.

<sup>6</sup> E-rate applicants are expressly prohibited from reselling or transferring “telecommunications services or network capacity” supported through the E-rate program. 47 U.S.C. § 254(h)(3).

We believe it is more cost effective to lease Wide Area Networks (“WANs”) than to build or purchase them. (¶ 74) E-rate applicants lack the expertise of a provider. (¶ 80) CenturyLink recognizes that the *Healthcare Connect Fund Order* allowed consortia to seek rural HCF support to build their own network facilities if such construction was determined to be the most cost effective option after competitive bidding.<sup>7</sup> (¶ 81) Although some state or regional research and education (“R&E”) networks are well run, publicly operated networks generally have a bad track record, with reliability issues and unexpected maintenance and operating costs. In the long term, it is nearly always wiser, and ultimately more cost effective, to have service providers build, maintain, and operate the network. It would be a mistake to fund building or purchasing of WANs within the E-rate program.<sup>8</sup>

As the FCC is well aware, Priority 2 funds are oversubscribed. (¶ 83) Yet, even with very limited availability of Priority 2 funds, CenturyLink is aware of many school districts that already have 100 Mbps or higher per school building. CenturyLink has many E-rate customers that already have 1 Gbps per building.

It is unreasonable to set maximum prices for E-rate services. (¶ 89) Circumstances and needs vary widely among applicants. Some require special construction. Size of districts and schools varies. Volume and term commitments differ. Some are located in high cost environments or rural areas. And technology is changing all the time. It also should be unnecessary to impose maximum prices, as competitive bidding and USAC oversight guard against excessive prices.

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<sup>7</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16712-13, ¶¶ 73-75 (2012) (“*Healthcare Connect Fund Order*”).

<sup>8</sup> The *Healthcare Connect Fund Order* also imposed several safeguards to ensure that consortia exercised their option to self construct only when it is truly necessary. It remains to be seen whether those safeguards will prove sufficient.

## **2. Phasing Down Support for Certain Services. (§§ 90-114)**

The NPRM asks whether the Commission should phase out support for some services, including for components of voice service and services not used primarily for educational purposes. It also asks whether the Commission should rework E-rate support to focus exclusively on high-capacity broadband connectivity to and within schools, rather than on the wider array of telecommunications and information services that the program supports today.

The NPRM notes that discontinuing support for some recurring services could be phased in over several years, such as by reducing the discount over time. (§ 91) Plainly outdated services, for which there is little demand, can reasonably be removed as lacking demonstrated need. Low-demand services that could be phased out include paging services (§ 92), directory assistance service (§ 93), dial-up services (§ 93), text messaging (§ 95), and 800 services (§ 95). However, “ride over” services have value, and the Commission would be very mistaken to eliminate them. These include electronic mail services and web hosting, among others. (§ 97)

Indeed, CenturyLink believes the Commission should extend E-rate eligibility to cloud data storage. The Chief Information Officer of the United States, appointed by the President to guide technology adoption for federal agencies, has sought to promote adoption of cloud data storage because of its efficiency, security, and cost savings.<sup>9</sup> The White House has directed all federal agencies to strive to migrate data storage, in particular, to the cloud.<sup>10</sup>

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<sup>9</sup> With cloud services, “users access computing power from a pool of shared resources,” providing “access to powerful technology resources faster and at lower costs.” Vivek Kundra, U.S. Chief Information Officer, *Moving to the Cloud* (May 13, 2010), available at <http://www.whitehouse.gov/blog/2010/05/13/moving-cloud>.

<sup>10</sup> Vivek Kundra, U.S. Chief Information Officer, *Federal Cloud Computing Strategy* (Feb. 8, 2011) at 1 (“[F]or the Federal Government, cloud computing holds tremendous potential to deliver public value by increasing operational efficiency and responding faster to constituent needs.”), available at

In the E-rate program, ironically, remote storage is not currently eligible for support. Remotely stored distance learning content, remotely stored video, and on-line back-up solutions currently are all ineligible.<sup>11</sup> Email is E-rate eligible, but archiving of Email is not. Yet cloud based services are generally so much more cost effective for schools and libraries than provisioning these data storage requirements on their own. The benefits will be even clearer with future expansion of distance learning, digital learning tools, and digital texts. Many K-12 school and systems have already recognized the value of cloud storage services.<sup>12</sup> Incenting applicants to utilize such services can actually help schools and libraries reduce costs by sharing resources and applications among multiple schools. The efficiencies gained from cloud computing may eventually reduce need for some other E-rate supported services.<sup>13</sup>

Following the Act, the Commission has always required that E-rate supported services be used for “educational purposes.” (§ 100) That includes, consistent with the program’s longstanding practice, services used only by school and library staff. After all, teachers, school administrators, and librarians all serve the statute’s “educational purposes,”<sup>14</sup> and the Act’s further directive “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit

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[http://www.whitehouse.gov/sites/default/files/omb/assets/egov\\_docs/federal-cloud-computing-strategy.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/egov_docs/federal-cloud-computing-strategy.pdf).

<sup>11</sup> Web hosting, hosted VoIP, and firewall service (when bundled with Internet service of CPE-based firewall equipment) are hosted or cloud-based services usually eligible for E-rate support.

<sup>12</sup> Examples include Albuquerque Public Schools, Oak Hill Academy of Virginia, and North Carolina K-12 School Systems.

<sup>13</sup> Ironically, the E-rate program itself requires extensive record retention, with data storage requirements growing for most applicants each passing E-rate funding year. It would make sense to enable the most modern and efficient means of complying with record retention rules.

<sup>14</sup> 47 U.S.C. § 254(h)(1)(B).

elementary and secondary school classrooms”<sup>15</sup> does not exclude those education personnel. Moreover, the Commission has explained that schools and libraries must “primarily,” not solely, use E-rate-supported services for educational purposes or classroom use. This understanding of the Act was essential to the Commission’s determination that schools may allow E-rate supported facilities to be used for community use after hours, provided student use has “priority” over other use.<sup>16</sup>

Regardless, it would be terribly impractical to require applicants to track administrative versus strictly educational usage separately or to maintain separate services or equipment for classroom and non-classroom use, as products and services logically would typically be purchased together for administrative or instructional use. The E-rate program is already complex to administer as it is.

Basic maintenance of internal connections should have robust E-rate funding. (¶ 101) It would be false economy to exclude it. Some schools have problems maintaining their E-rate supported facilities, and the complexity of those systems will only grow with higher connectivity and continuing expansion of WANs. Fixing problems can demand more in resources, time and energy than expected. With schools and libraries on fixed annual budgets, they value the predictability of maintenance service. Otherwise needed maintenance or repairs too often may be deferred, leading to waste of school and program resources and compromising instructional benefits for students.

E-rate support for cellular data plans and air cards can readily be capped or discontinued. (¶ 102) These services are costly compared to wireline service offerings likely already available

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<sup>15</sup> 47 U.S.C. § 254(h)(2)(A).

<sup>16</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18774, ¶ 22 (2010) (“*Schools and Libraries Sixth Report and Order*”).

at nearly any school or library, and cellular data plans and air cards are prone to waste, fraud, and abuse.

CenturyLink supports SECA's recent proposal to streamline Priority 2 services. (§ 104) SECA recommended that the Priority 2 Eligible Services List should be "redefined to focus on ensuring that the transmission of bandwidth inside the building is sufficient, and all other functionality should no longer be eligible for support."<sup>17</sup> It therefore suggests that Priority 2 eligible services should be limited to routers, up to one per building, wireless access points, up to one per classroom, and internal cabling, up to three cabling drops per classroom for schools. CenturyLink agrees that standardization in this way would help streamline administration, improve predictability, and provide a more uniform, reasonable level of support.

It would be wrong, however, to eliminate support for voice services generally (§ 105), to eliminate support for standalone voice, or to limit support for voice to instances where it is bundled with broadband. (§ 110) CenturyLink accordingly opposes SECA's proposal to discontinue E-rate support for stand-alone voice to coerce applicants and service providers to migrate voice to the broadband data platform.<sup>18</sup> Voice services are the foundation of universal service, and they remain essential for communication and public safety. Traditional wireline voice services are noted for high reliability and cost effectiveness. Although Voice over Internet Protocol ("VoIP") service is a viable alternative to public switched phone service (§ 109), the choice of voice service or voice technology should be left to school administrators.

The Act likely precludes ending support for standalone voice services, in any event.

Although the Act directs the Commission to "tak[e] into account advances in the

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<sup>17</sup> Letter from Gary Rawson, State E-rate Coordinators' Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 7 (filed Jun. 24, 2013) (attaching "Recommendations for E-rate Reform 2.0").

<sup>18</sup> *Id.* at 6-7.



telecommunications and information technologies and services,” it provides that universal service support extends to the services by “telecommunications carriers” that are “supported by Federal universal service support mechanisms.”<sup>19</sup> Standalone voice remains squarely among them. In the *USF/ICC Transformation Order*, the Commission explained that *voice*, not broadband, is the USF-supported service.<sup>20</sup> The Commission expressly required eligible telecommunications carriers to offer standalone voice service.<sup>21</sup>

At the same time, there is no need to phase out support for standalone or traditional voice service on the notion that these essential and popular services are somehow obsolete. With the progress of technology and network upgrades, voice service will gradually transition to a broadband application. During that long transition, many schools and libraries will continue to

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<sup>19</sup> 47 U.S.C. §§ 254(c)(1), (c)(3). *See also* 47 U.S.C. § 254(h)(1)(B).

<sup>20</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform- Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Red 17663 at ¶¶ 61-65 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”), *Order Clarifying Rules*, 27 FCC Red 605 (rel. Feb. 3, 2012) (“*Clarification Order*”), Erratum to *USF/ICC Transformation Order* (rel. Feb. 6, 2012), Application for Review pending, *USCC, et al.*, filed Mar. 5, 2012, *Further Clarification Order*, DA 12-298, 27 FCC Red 2142 (2012), Erratum to *Clarification Order* (rel. Mar. 30, 2012), Second Erratum to *USF/ICC Transformation Order*, 12-594, 27 FCC Red 4040 (2012), *pets. for recon. granted in part and denied in part*, Second Order on Recon., FCC 12-4 7, 27 FCC Red 4648 (2012), *pet. for rev.*, *Windstream v. FCC* (10th Cir. No. 12-9575); *Third Order on Recon.*, FCC 12-52, 27 FCC Red 5622 (2012), Erratum to *Second Order on Recon.* (rel. June 1, 2012), *Order Clarifying Rules*, DA 12-870, 27 FCC Red 5986 (2012), Erratum to *Order Clarifying Rules* (rel. June 2012), Second Report and Order, FCC 12-70, 27 Red 7856 (2011), *Fourth Order on Recon.*, FCC 12-82, 27 FCC Red 8814 (2012), *Order Clarifying Rules*, FCC 11 27 FCC Red 8141 (2012), Fifth Order on Recon., FCC 1 37, 27 FCC Red 14549 (2012), Erratum to *Fifth Order on Recon.* (Dec. 4, 2012), *pets. for rev. of USF/ICC Transformation Order pending, sub nom. In re: FCC 11-161* (10th Cir. No. 11-9900, Dec. 16, 2011).

<sup>21</sup> *Id.* at 17693 ¶ 80.

depend on standalone voice services. A focus on high capacity should be a gradual complement to, not a rapid replacement for, the existing program.

**B. Ensuring equitable access to limited E-rate funds. (¶¶ 115-162)**

In 2003, a USAC task force recommended requiring at least 20% matching funds for Priority 2 projects receiving E-rate support.<sup>22</sup> (¶ 116) Given the NPRM's proposal to expand Priority 2 spending, CenturyLink believes that higher-match policy is likely appropriate. A higher Priority 2 match could encourage more efficient, long-term decisions. The Rural Health Care program now requires applicants to contribute 35% of costs for supported services, which gives applicants greater incentive to control costs of services and "balances the objectives of enhancing access to advanced telecommunications and information services with ensuring fiscal responsibility and maximizing the efficiency of the program."<sup>23</sup>

**C. Lowering new build costs and identifying additional funding to support broadband to Schools and Libraries. (¶¶ 163-176)**

**Public private partnerships. (¶ 164)**

In the NPRM, the Commission proposes to facilitate use of new fiber runs for multiple businesses. These could include backhaul for wireless towers and connectivity for enterprise users. The Commission would be wiser, however, not to encourage applicants to directly share facilities with other parties. Schools and libraries should be customers like any other. When they seek competitive services, service providers will already consider availability of adjacent fiber or other current or potential customers, which will include backhaul for cell towers and connectivity to any other users. The market will provide these efficiencies far better than the

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<sup>22</sup> USAC, Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse, at 3-4 (Sept. 22, 2003) (submitted with letter from Cheryl Parrino, USAC, to Marlene Dortch, Secretary, FCC (filed Nov. 26, 2003).

<sup>23</sup> See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16717-19, ¶¶ 84, 91.

Commission, USAC, or applicants ever could. The Commission should let the market work, instead of promoting “partnerships” that are likely to be far less efficient and may be influenced by other, non-business considerations.

The Commission should welcome and encourage applicants to seek other funding from state, local, and private organizations. (§ 165) A higher matching funds requirement for Priority 2 would likely support this goal.

#### **Coordinating with other Universal Service programs. (§ 167)**

The *HealthCare Connect Fund Order* recently allowed an exemption from competitive bidding obligations for health care providers entering into a consortium with E-rate participants.<sup>24</sup> CenturyLink believes E-rate applicants should not be exempted from competitive bidding obligations when entering into a consortium. (§ 171) Consortia often are not the most efficient or cost-effective provider of E-rate services.<sup>25</sup> Competitive bidding helps provide a measure of discipline in the program.

#### **Funding the proposed goals through E-rate. (§§ 172-176)**

The NPRM asks whether and how the E-rate funding cap should be increased, and whether an increase is necessary to reach program goals and ensure high capacity broadband connectivity. (§§ 172-173) CenturyLink notes that it serves a growing number of school districts that already have 100 Mbps service or better at all locations; many have 1 Gbps or better per building.<sup>26</sup> Nor are these advanced service deployments limited to affluent areas. If the Commission increases program funding to encourage more schools to reach that goal, it must be

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<sup>24</sup> *Healthcare Connect Fund Order*, 27 FCC Rcd at 16792-93, §§ 266-267.

<sup>25</sup> See Section IV(A), *infra*.

<sup>26</sup> In CenturyLink’s service areas across the country, there are dozens of K-12 school districts that have 1 Gbps per school building. Many others have 100 Mbps connectivity.

sensitive to political and practical concerns about the impact on consumers. Any increase in fund size needs to be constrained by an awareness of how this and other Commission regulatory and program initiatives are contributing to higher end user charges. It is also critical that E-rate funding not diminish *Connect America Fund* support for broadband deployment in high cost and rural areas.

#### **IV. MAXIMIZING THE COST EFFECTIVENESS OF E-RATE FUNDS (§§177-223).**

##### **A. Increasing Consortium Purchasing. (§§ 179-185)**

In allowing consortia to receive E-rate support, the Commission assumed that aggregating demand would always lead to lower prices and promote efficient use of shared facilities. Aggregating purchasing can indeed reduce prices, and service providers like CenturyLink welcome larger purchase commitments through consortia as a way to enlarge purchase commitments and thereby lower prices. But where consortia deploy dark fiber or lease or construct their own facilities, benefits and efficiencies are too often lost.

Many states and counties have bulk buying arrangements, such as master purchasing contracts. Centralized purchasing through school districts and county library systems is itself a form of bulk buying, compared to individual schools making separate purchase arrangements. Such bulk buying arrangements generally serve all parties well. Participating schools or school districts can secure lower prices, the E-rate program can realize cost efficiencies, and service providers can have greater volume and term commitments to help justify the investments necessary to provide service.

But the Commission should not encourage participation in consortia or publicly-owned networks that lease or operate their own fiber. Although some R&E networks have been managed well, publicly-operated networks nearly always overbuild existing commercial networks -- telecommunications facilities operated by a service provider that ultimately could

deliver connectivity more cost effectively. Often, such groups misjudge their collective members' needs and end up with either too much idle capacity or unreasonable warehoused capacity. Such groups often overlook the costs of maintenance and operation. This could be a growing problem as the program transitions to promote higher capacity connectivity. The Commission should not add modulating equipment or special construction charges to E-rate eligibility.

Bulk buying arrangements, on the other hand, allow aggregation of volume that produces more consistent savings and reliability, and without the market distortions of dark fiber. Granted, a bulk buying arrangement may not be the best choice for every school or district. Some bulk buying arrangements may be more expensive, as consortium management or state contract administrators may impose a mark-up or assess administrative costs. Also, one needs to remember that it is a commitment to purchase that enables discounting in any bulk buying arrangement. Service providers sometimes find applicants unwilling to make commitments, or consortia members forgetting that the group is responsible for the bills of all consortium members, whether or not a member fails to timely pay its share of the total bill. Bulk buying groups cannot expect to short-pay invoices just because one member failed to meet its obligations to the group.

Consortia that include non-E-rate eligible participants -- such as municipalities, universities, and health care providers -- raise too many issues and complications with respect to E-rate program administration. CenturyLink believes that schools and libraries should not be eligible for E-rate discounts for services purchased through consortia that include non-E-rate eligible participants. (§ 184) The Commission must also be mindful of other policy side effects. (§ 185) Publicly owned or operated facilities undermine competition by introducing nonmarket

pricing, subsidizing their operations by tax-payers, and taking traffic and revenue opportunities from tax-paying private operators. Municipal or publicly owned systems also have a very poor track record, for cost effectiveness, quality of service, and reliability. They are too often not utilized efficiently, but instead end up with excess capacity. One of their effects is to discourage private broadband network investment, or sometimes strand prior investment by private providers. Ultimately, that undermines the nation's other, more critical broadband deployment and investment goals, especially in areas that are marginal for broadband investment even with *Connect America Fund* support in high cost areas.<sup>27</sup>

**B. Encouraging other types of bulk buying opportunities. (¶¶ 186-190)**

The FCC does not need to take any particular steps to encourage other types of bulk buying arrangements. Many states and even some larger counties today have master contracts or similar group or bulk purchasing vehicles available for schools and libraries. These can be an attractive choice for some E-rate applicants. Not every bulk buying arrangement, however, is the most suitable or most cost-effective option for a particular E-rate customer. Bulk buying arrangements often have volume and term commitments, some impose administrative costs, and some may be more expensive for a particular combination of services than alternatives. Applicants always need to assess the requirements that accompany bulk buying opportunities.

The Commission and USAC should not attempt to create some “bulk buying” program of their own. State and some county and municipal authorities manage many bulk buying arrangements today. There are more than 130,000 schools and nearly 9,000 public libraries -- in 50 states and more than 3,000 counties.<sup>28</sup> Given their great diversity and their particular needs, it makes far more sense for such arrangements to be handled at the state level or major county

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<sup>27</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17681-17683, ¶¶ 48-59.

<sup>28</sup> *See* Section IV(C), *supra*.

level. Additionally, Commission or USAC involvement would too likely conflict with the E-rate competitive procurement process that USAC manages and the Commission oversees.

**C. Increasing transparency. (§§ 191-201)**

The NPRM invites comment on how to provide more transparent pricing of E-rate services. The National Broadband Plan, it notes, recommended collecting and distributing data on use of E-rate funds.<sup>29</sup> (§ 192) Collecting data on how E-rate funds are used is best done by sampling applicants. The NPRM's suggestion of compiling a public database of E-rate service pricing would likely not be worthwhile.

It is not evident that there is any need for or likely benefit from such an effort. To begin with, states already typically provide this function for school and library organizations. And they perform it far better than the Commission or USAC could hope to. Indeed, state master contracts are already one of the most important price sharing vehicles for E-rate applicants. States, not the Commission or USAC, are in the best position to oversee any information sharing or databases, particularly since pricing in one state or region typically will have little bearing on pricing in another. The Commission should leave such responsibility to state and local authorities where it belongs.

Additionally, E-rate contracts are awarded through competitive public procurement process or are purchased from public tariffs or schedules. Actual purchase prices are already disclosed following award, and tariffed or scheduled services are publicly priced already.<sup>30</sup>

Pricing information is already generally available. Of course, most service offerings are

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<sup>29</sup> Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010), available at <http://www.broadband.gov/download-plan> ("National Broadband Plan").

<sup>30</sup> Commission rules already require service providers to retain records of rates charged to, and discounts allowed for eligible schools and libraries. This information is available on reasonable request. See 47 C.F.R. § 54.501(c)(3).

individually tailored to an applicant's particular needs, so comparisons are seldom apples-to-apples. Additionally, Item 21 provides relatively little detail about purchased services, and it may be completed differently by different applicants. An FCC or USAC database is unlikely to be very useful.

If the Commission were to have USAC develop any sort of pricing database, it must secure the information from schools and libraries, where they choose to participate, not from service providers. Service providers are subject to Customer Proprietary Network Information (“CPNI”) rules that restrict them from disclosing customer information, even in public procurement settings.<sup>31</sup>

The Commission certainly should not compile and release bidding information. (§ 195) A database containing bid information would undermine the competitive bidding process and could violate state and federal law procurement laws. (§ 194) Disclosure of unsuccessful bids could also discourage providers from providing their absolute best bids, or from bidding in some cases, ultimately increasing prices for E-rate applicants.

It would be improper for the Commission or USAC to take a more active role in assisting applicants in identifying cost-effective purchasing options. USAC’s online list of internal connections equipment eligible for discounts, cited in the NPRM (§ 198), was doubtless helpful. For equipment, pricing lists may work well. But services, unless purchased off the shelf (such as tariffed voice services) vary widely depending on the customer’s particulars, including term, volume, locations, and serving company.

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<sup>31</sup> CPNI includes any personally identifiable information derived from a customer’s relationship with a provider of communications services. The Communications Act imposes on every carrier a duty to protect the confidentiality of its customers’ CPNI. 47 U.S.C. § 222.



A database, moreover, would be a huge task -- difficult and expensive to administer, and possibly infeasible. The universe of E-rate applicants and service providers is vast. For example, there are 98,817 public K-12 schools in the U.S., plus another 33,366 private schools, with all but a few eligible for E-rate support.<sup>32</sup> There are 8,951 public libraries in the country.<sup>33</sup> CenturyLink itself serves nearly 4,000 distinct and varied E-rate applicants, which in turn operate an even larger constellation of school and library buildings. They include individual schools and large consolidated districts. They include schools and libraries of every size, with a wide array of different services. They include locations in 46 states, with radically different population densities, topography, topology, and climate -- and differing financial resources.

Given that extraordinary diversity, a database likely would not be sufficiently useful to justify the program's expense. And virtually every E-rate customer is unique; these services are rarely one-size-fits-all. A database would be impractical given how most E-rate customers -- especially with high capacity connectivity -- require customized service arrangements.

The Commission should not have USAC establish an office to help applicants identify the best prices for E-rate eligible services and products. (§ 200) While CenturyLink values USAC's efforts to assist program applicants, it must remain a neutral party in E-rate program administration and in E-rate service procurement.

#### **D. Improving the competitive bidding process. (§§ 202-210)**

The competitive bidding process for E-rate actually works well and delivers cost effectiveness. E-rate procurement is also governed by state law, so FCC should not adopt

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<sup>32</sup> U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2011* (NCES 2012-001), Table 5. A copy is available at [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_005.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_005.asp).

<sup>33</sup> Institute of Museums and Library Services, *Public Libraries in the United States Survey: Fiscal Year 2010* (Jan. 2010) at 1. A copy is available at <http://www.ala.org/tools/libfactsheets/alalibraryfactsheet01>.

potentially inconsistent policies. One improvement would be to require applicants to provide, up front, a clearer statement of the criteria by which bids will be evaluated. A clear description of how bids will be judged and scored is important to ensure applicants receive the types of bids they want, and at the best prices and terms. Such transparency also promotes fair and open competition while encouraging more bidders.

On FCC Form 470, the Commission should not eliminate the 28-day waiting period when there is just one provider or when it is a contract renewal. (§ 204) E-rate procurement rules must maximize the opportunity for competition, and Commission rules require applicants to conduct a fair and open competitive bidding process. (§ 206) For similar reasons, the Commission should not exempt certain applications or applicants from E-rate competitive bidding rules on the basis that they are complying with state and local competitive bidding requirements. It is essential that E-rate have consistent, standard rules. At the same time, the Commission does not need to prohibit single or no-bid contracts. Extending existing services (even based on a current bill) and availability of tariffed services or scheduled offerings routinely and reasonably serve as de facto bids even where no service provider affirmatively responds to a Form 470 posting, or where only one does so. To bypass the competitive procurement process, an applicant must demonstrate that there is no one offering the service, not merely bidding on a Form 470, and that is increasingly rare.

The NPRM seeks comment on the extent to which the LCP requirement helps ensure that service providers charge cost effective prices for E-rate services. (§ 209) CenturyLink believes that major service providers consistently deliver the lowest corresponding price. Frankly, the LCP rule today can be eliminated as unnecessary, because the competitive market provides cost effective prices. The days of monopoly providers are long over.

Unfortunately, the LCP rule is sometimes misunderstood or misinterpreted; it is not a model of perfect clarity, which is why CTIA and USTelecom filed a petition about the rule three years ago.<sup>34</sup> (§ 210) CenturyLink would welcome the Commission acting on the CTIA/USTelecom petition by confirming the points outlined in that filing. The petition reflects reasonable and widespread understanding of the LCP rule and is consistent with a decade and a half of industry practice. During all that time, the market for telecommunications and information services and products has become only more competitive. Granted, in the three years since the associations filed that petition, the Commission has not seen a need to act on it. At this point, the Commission could take no further action on the LCP rule, especially if the FCC adopts the certification proposed elsewhere in the NPRM (§ 309).<sup>35</sup>

**E. Efficient use of funding. (§§ 211-216)**

The NPRM invites comment on how best to ensure each application reflects a cost effective approach to meeting the applicant's need for E-rate supported services. Today, E-rate procurement rules require price to be the primary factor when selecting a bid for service. That standard has served the program well. The Commission could improve the efficiency of funding by striving for one improvement in the procurement process. It should direct USAC to ensure that applicants are clear in specifying the services sought and in disclosing the criteria by which bids will be evaluated.

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<sup>34</sup> Petition by United States Telecom Association and CTIA – the Wireless Association for Declaratory Ruling Clarifying Certain Aspects of the “Lowest Corresponding Price” obligation of the Schools and Libraries Universal Service Program, WC Docket No. 02-6 (filed Mar. 19, 2010). *See Wireline Competition Bureau Seeks Comment on Petition of United States Telecom Association and CTIA – The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the “Lowest Corresponding Price” Requirement of the Schools and Libraries Universal Service Program*, Public Notice, 25 FCC Rcd 3662 (Wireline Comp. Bur. 2010).

<sup>35</sup> *See* Section VI(A)(2)(b), *infra*.

A clear description of how bids will be judged and scored is important to ensure applicants receive the types of bids they want, and at the best prices and terms. Such transparency also ensures fair and open competition while encouraging more bidders to participate.

**V. STREAMLINING ADMINISTRATION OF THE E-RATE PROGRAM (§§ 224-269).**

CenturyLink supports the Commission's stated goal to reduce complexity and burdens for applicants and service providers. (§ 224) Of course, to achieve any meaningful progress toward that goal, the Commission needs not merely to focus on streamline administration but also to exercise real restraint in adopting and changing rules, demanding data, and imposing regulations on E-rate program participants.

As the Commission is aware, that complexity has led to a proliferation of E-rate consultants. Some provide good advice and service, but too many do not. The Commission and USAC should caution applicants that they are responsible for their consultants. If they are to utilize such third parties, they must ensure they are qualified and that their work is properly reviewed and supervised. Applicants should be particularly leery of consultants paid on commission or percentage.

The Commission could consider having USAC apply a modest but public penalty fee -- applied against current or future funding -- for applicants if they or their chosen service provider has a demonstrated history of funding rejection very far above the program average. This could encourage greater care in program management, helping minimize waste, fraud, and abuse while imposing minimal additional administrative costs. It would also make it easier for applicants to identify consultants and service providers that have exceptionally poor track records in the program.

**A. Electronic filing of forms and correspondence with the FCC. (§§ 227-231)**

One way to streamline E-rate program administration would be to enable greater use of electronic filing by applicants and electronic notices by USAC. (§ 227) Storing all of an applicant's relevant forms and correspondence on a centralized portal seems a good idea, and would be a convenience for the program's many applicants. Making information available to applicants in this way may not significantly reduce program costs, but it would very likely reduce administrative costs for the program's many thousands of applicants across the country.<sup>36</sup>

**B. Speeding review of applications, commitment decisions, and funding disbursement. (§§ 233-247)**

Multi-year contracts have the potential to drive down services costs, provide greater certainty, and minimize duplicative application work and duplicative review by USAC. The NPRM proposes that, absent a change in contract service provider or recipient of service, E-rate applicants with multi-year contracts that are no more than three years in length (including any voluntary extensions) should file a single Form 471 application. (§ 241) CenturyLink supports this proposed change in rule.

The NPRM also proposes amending program rules to permit multiyear commitments in the E-rate program. (§ 242) The FCC recently adopted a comparable policy in the Healthcare Connect Fund order, which provides for funding commitments of up to three years. However, that policy has no track record to date. Funding difficulties and uncertainties make it premature to allow multiyear commitments in the much larger E-rate program. Instead, it is sufficient for

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<sup>36</sup> The Commission already requires service providers to utilize electronic payment systems to receive E-rate disbursements, for similar reasons of administrative efficiency and lower program costs. *Wireline Competition Bureau Establishes the Effective Date for Electronic Disbursement of Universal Service Support Payments*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 7067 (Wireline Comp. Bur. 2010).

E-rate applicants to submit a streamlined application for renewal of existing service under a multi-year Form 471.

The Commission also should not allow longer maximum terms for IRUs and dark fiber. There is too high a risk of hitting program funding limits, and allowing longer maximum terms for these services could undermine availability of funding for other applicants with more conventional needs. For similar reasons, the Commission should not exempt certain services, such as IRUs for dark fiber, from any limits on multiyear contracts.

**C. Simplifying the Eligible Services List. (§§ 248-251)**

The NPRM asks whether it may be advisable to simplify the ESL and Form 471 application process by adopting a definition of eligible services that provides funding regardless of regulatory classification. This would remove the classifications of “telecommunications” and “Internet access” to allow applicants to seek eligible services from any entity. This would be an improper and unfair change in policy.

On the contrary, the Commission should be enforcing the regulatory classifications in E-rate more thoroughly, there have been too many instances of abuse by nontelecommunications providers ignoring the rule. Section 254(h)(1)(B) refers only to “telecommunications carriers providing service” to schools and libraries.<sup>37</sup> Officially disregarding the regulatory classifications -- and the regulatory requirements that go with them -- would skew the competitive environment in favor of smaller, unregulated players. It would be unfair to service providers, like CenturyLink, that are more highly regulated, that comply with FCC rules, and that contribute -- with their other customers -- to the Universal Service Fund that makes the E-rate

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<sup>37</sup> 47 U.S.C. § 254(h)(1)(B).

program possible. Opening the door to disregard the regulatory classifications may also lead to waste, fraud, and abuse by promoting providers that are less punctilious about compliance.

In the E-rate program, telecommunications services should be provided by those who are actually qualified carriers, subject to FCC rules and contributing to the universal service fund. Until the FCC deregulates telecommunications providers more generally and creates a level playing field for the entire industry, all E-rate service providers should be subject to -- and required to respect -- the same regulatory requirements, including their classifications.

**D. Invoicing and disbursement process. (§§ 259-265)**

The Commission should make some changes to maximize administrative efficiency and improve the E-rate disbursement process. CenturyLink welcomes, for example, the Commission's proposal to modify processes to allow applicants to receive disbursements directly from USAC and to adopt specific invoice deadline and invoice deadline extension rules. Currently, an applicant may choose either of two methods of reimbursement: it may pay the service provider the full cost and then submit a Form 472 BEAR form, or it may pay only the applicant's discounted portion and then the service provider must file a Form 474 Service Provider Invoice ("SPI") form. The FCC originally set this reimbursement system up after concluding that service providers rather than applicants should seek compensation for "administrative ease."<sup>38</sup> (§ 261) But that approach interferes with the proper relationship between customer and provider.

Major carriers have long advocated removing service providers from their present, awkward middleman role. The E-rate program should not alter the customer/provider relationship between the applicant and the service provider. This also provides an opportunity to

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<sup>38</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9083, § 586 (1997) ("*Universal Service First Report and Order*").

simplify administration. One option recommended by major carriers was an account system, by which USAC would direct approved E-rate disbursements to a debit account for each applicant. The system would provide easier tracking of payments, allow greater visibility for applicants, and would reduce administrative costs for applicants and service providers. It would also provide a more natural relationship between service provider and applicant.

The Communications Act does not create any barriers to payment of USF funds directly to E-rate applicants. Section 254 gives the Commission fairly broad discretion in designing the E-rate program. The 5<sup>th</sup> Circuit, in addressing the consolidated appeals of the *Universal Service First Report and Order*,<sup>39</sup> expressly upheld the Commission’s authority under sections 4(i) and 254(h)(2)(A) to provide support outside the express framework of section 254(h)(1)(B).<sup>40</sup> If the Commission were to find that section 254(h)(1)(B) required payment through carriers, then it would follow that the Commission would be compelled to allow E-rate support *only* to service providers that receive high cost USF support, a conclusion the Commission has not made. The only requirement in the Act about E-rate reimbursement is that the service provider shall be “made whole.” Therefore, modifying the current Billed Entity Applicant Reimbursement (“BEAR”) process to allow USAC to reimburse the applicant directly would provide sufficient documentation to demonstrate that the applicant has fully paid for the requested services and is entitled to direct reimbursement from USAC. (¶ 262)

The NPRM asks for other improvements to invoicing or certifications required on invoicing forms, including Forms 472 and 474. (¶ 263) Currently, service providers must make a certification each time they file a Form 472, which results in larger service providers having to

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<sup>39</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9002, ¶¶ 424-25 .

<sup>40</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 443-44 (1999), discussing authority 47 U.S.C. §§ 4(i), 254.



submit hundreds or thousands of certifications every year. That is excessive. It should be sufficient to revise Form 473 (the annual Certification Form) to incorporate Block 4 of Form 472 instead. In any case, absent a compelling need, the Commission should not be imposing additional certification requirements except to the extent they are reducing, rather than adding to, the existing administrative burdens.

## **VI. OTHER OUTSTANDING ISSUES. (§§ 270-327)**

### **A. Additional measures to prevent waste fraud and abuse. (§§ 294-313)**

#### **1. Extending the E-rate Document Retention Requirements. (§§ 295-297)**

The NPRM proposes to extend the E-rate program document retention requirements from five to ten years. This requirement would clearly be excessive. The current rule is five years after last day of delivery of services. With multiyear contracts, that is already ample.

Storage of records is costly, both in terms of data storage and personnel. It is rare that records of a decade or more in age would be meaningful. The Commission must bear in mind the incremental costs and burdens of such regulations on applicants, service providers, and the public. Imposing a ten-year document retention requirement would create needless costs for applicants and service providers, with minimal benefit to the public. The NPRM asserts that the federal False Claims Act<sup>41</sup> and some state laws may have statutes of limitations longer than five years. But such measures are rarely invoked, and even more rarely justified, in investigating potential wrongdoing by E-rate participants or service providers. The remote possibility of such claims cannot justify a mandatory ten-year retention policy, given the costs involved.

Regardless, the FCC has broad authority to require a “hold” of documents upon commencing an investigation of an E-rate program participant or provider. It should not make

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<sup>41</sup> 31 U.S.C. §§ 3729-33.

such a hold requirement “automatic” but should require notice to any affected party. Otherwise there is a risk of inadvertent violation by action of perfectly reasonable document retention policies. Awareness of an investigation is not itself automatic within a school system or service provider, many of whom are large organizations. A targeted hold -- targeted to party and to particular types of documents -- would be a more efficient and more reasonable approach that reduces burden while ensuring the Commission and USAC have access to appropriate records. (¶ 297)

## **2. E-rate FCC Form Certification Requirements. (¶¶ 299-313)**

### ***a. E-rate form signatories. (¶¶ 301-307)***

E-rate administration would be simplified, and costs for all parties would be lowered, if the Commission would update its rules to allow use of electronic signatures on E-rate documents, including contracts and purchase orders. The Commission should confirm that use of DocuSign or similar technology qualifies as an “actual signature” under E-rate rules.

The Commission also should not amend its rules to require an officer to sign Forms 472, 473, and 474. Current rules allow an “authorized person” to provide the certification. For larger service providers, at least, it is surely unreasonable to limit signing authority solely to corporate officers. CenturyLink, for example, serves nearly 4,000 distinct E-rate applicants, located in 46 states. The company has more than 45,000 employees and more than \$18 billion in annual revenue; E-rate service is only a small part of its business. The NPRM asserts that “[r]equiring an officer to certify compliance will help ensure that the certification reflects the service provider’s commitment to understand and comply with the E-rate program rules and requirements.” (¶ 302) Instead, it is strictly unrealistic to assume that an officer -- at least among larger, publicly-traded service providers -- will have any first-hand knowledge of the particular transactions or familiarity with E-rate program rules and requirements.

The individuals with that knowledge are not officers, but the many “authorized persons” that currently serve that role. The Commission should continue to allow providers to designate an appropriate, knowledgeable representative. It also is neither necessary nor appropriate to require that the certifications by service providers be made by an individual who designated as “responsible for ensuring program compliance” by the service provider. (§ 307) In a large organization, it should be sufficient for designated representatives to process these many forms. After all, the Commission requires today certifications on Forms 470, 471, 472, 473, 474, 479, 486, and 500. At a time when the Commission should be streamlining E-rate administration, such “certification overkill” would impose needless administrative burdens. It would likely lead larger service providers to decline to respond to some Form 470s that are otherwise marginal, which could only lead to higher costs for applicants and the program.

***b. Additional certifications. (§§ 309-313)***

The NPRM proposes to amend section 54.511 of the Commission’s rules<sup>42</sup> to require service providers to certify their compliance with the LCP rule. (§ 309) It also proposes to require them to certify compliance with state and local laws. (§§ 310-311) LCP certification should be unnecessary, and CenturyLink believes the record does not suggest any problem of LCP violations. Lowest corresponding price is delivered by the contracting procurement process and by public tariffs and service schedules -- a system that by all accounts is working well and delivering value to schools and libraries nationwide. Indeed, the LCP rule itself could be eliminated as unnecessary in today’s competitive market. But while there has not been a problem of LCP noncompliance, the rule and the certification invites disputes over what constitutes LCP. However, if the Commission adopts this certification requirement, it should

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<sup>42</sup> 47 C.F.R. § 54.511.

change the language to the past tense, rather than the present tense. Certifications should be backward looking, not open-ended.

It is unnecessary to require certifications that service providers complied with state and local procurement laws. Service providers are subject to these laws without regard to any certification requirement adopted by the Commission, or indeed without regard even to Commission rules or the Communications Act. Accordingly, such a certification is unnecessary. Moreover, the Commission is not equipped either to know or to enforce state and local procurement law. It should leave this responsibility to other authorities.

It would also be unwise to delegate to the Wireline Competition Bureau open authority to add additional certifications requirements. The Commission should be looking to simplify program administration, not to add administrative complexity, costs, and compliance burdens. If the Bureau determines that the E-rate program is experiencing compliance problems, either by an individual provider or a class of provider, it should refer the matter to the Enforcement Bureau for investigation.

### **3. Post-commitment compliance and enforcement. (¶¶ 314-318)**

Following a recent rule change, the Lifeline program requires that eligible telecommunications carriers that receive \$5 million or more annually hire an independent audit firm to assess overall compliance with Lifeline program requirements.<sup>43</sup> The NPRM asks whether a similar requirement should be applied to the E-rate program. (¶ 315) CenturyLink believes such a policy is unwarranted in the E-rate program.

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<sup>43</sup>*Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6782-85 ¶¶ 291-97 (2012). The rule was codified at 47 C.F.R. § 54.420.

The Commission had particular concerns about broad noncompliance among new ETCs in the Lifeline program. The Lifeline program had grown dramatically since the program was opened to wireless ETCs, including a raft of wireless resellers and the availability of “free” phones and service. The growth of the program predictably had been marked by abuse, including marketing of phones to ineligible consumers, issuance of duplicate phones per household, and failure to decommission phones that were being unused. In contrast, there have not been comparable problems to warrant adopting a similar requirement for E-rate participants.

CenturyLink strives to be at the forefront of the industry in business ethics and E-rate compliance. But it believes the costs of a universal independent audit requirement for service providers exceed the likely benefit for the program. Instead of a universal independent audit requirement, the Commission should limit such a rule to service providers that are new to the E-rate program, and to service providers where the Commission or USAC have particular grounds that justify closer scrutiny. CenturyLink also believes, in any case, that smaller service providers should be subject to the same requirements as their larger competitors.

The Commission also should not tie E-rate participation to the government-wide debarment and suspension system for service providers. (¶ 316) The Commission already has authority to suspend and debar participation in Universal Service Fund programs where there have been certain criminal convictions or civil judgments.<sup>44</sup> That, together with other Commission authority, is sufficient enforcement authority without taking additional steps. The Commission should be careful not to allow minor violations, or differences of rule interpretation, lead to threat of enforcement overkill.

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<sup>44</sup> See 47 C.F.R. § 54.8.

**B. Wireless community hotspots. (§§ 319-323)**

The NPRM asks whether schools should provide wireless hotspots to surrounding communities using E-rate supported services and facilities. (§ 320) The Commission should not allow use of E-rate funding, directly or indirectly, for wireless community hot spots. Congress directed the Commission to develop the E-rate program to provide support for schools and libraries, not for wider community use. The statute provides that universal service support for schools and libraries shall be for “educational purposes.” The Commission lacks authority to extend E-rate support for broader community use without a sufficient nexus to educational purposes.

Given the proliferation of WiFi-capable devices, the Commission would be opening the door to widespread use of public resources for noneducational purposes. E-rate resources are already limited; indeed, the NPRM contends many schools lack sufficient connectivity. Wireless community hotspots would necessarily require resources, including facilities and bandwidth. The total cost nationwide would quickly become very substantial. Similarly, usage of E-rate supported services off school or library grounds is generally ineligible for support. Even with cost allocation, it would be inappropriate for E-rate to be indirectly subsidizing community hotspots, when the program should be focusing its resources on classrooms and libraries.

The NRPM notes that in *Sixth Report and Order*,<sup>45</sup> the Commission revised its rules to expressly allow schools to open their facilities to the general public when classes are not in session. (§ 319) This idea was widely supported because, where schools elect to participate, this limited community use within school libraries would add no incremental burden to the E-rate program, while allowing public benefit from resources that otherwise would be under-utilized or

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<sup>45</sup> *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18773-77, ¶¶ 20-27.

idle after-hours. Unlike wireless community hotspots, community use of school libraries after-hours would require no deployment of additional equipment, internal connections, or facilities, and it would have no impact on bandwidth or capacity, because any usage would be at hours where school usage is already limited. The *Sixth Report and Order* clarified, however, that student use must have “priority” over other use.<sup>46</sup> Community wireless hotspots cannot give priority to student use, because coverage, by design, is outside school facilities.

If applicants use service both on and off premises, they should reduce their funding request by the amount of ineligible offsite use. (¶ 322) Realistically, there are no conditions that the FCC could impose on allowing community access to schools E-rate supported service via community hot spots, other than ensuring any costs incurred -- including for equipment and cabling, connectivity, maintenance and bandwidth -- are accounted for and not imposed on the E-rate program.

**C. Procedures for national emergencies. (¶¶ 324-328)**

CenturyLink has no comment at this time about the NPRM’s proposal to adopt rules requiring USAC to follow specific procedures in the aftermath of a natural disaster or other emergency. We recognize that schools and libraries affected by natural disaster or other emergency benefit from USAC’s assistance in obtaining immediate relief. As a service provider in areas hard-hit by Hurricane Katrina, CenturyLink takes this opportunity to applaud the FCC’s and USAC’s efforts for schools and libraries in those communities. USAC, in particular, did an outstanding job in helping schools and libraries get damaged facilities repaired and interrupted

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<sup>46</sup> *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774, ¶ 22 (allowing community use of E-rate funded services and facilities at schools, but requiring that students “always get first priority in use of the schools’ resources”).

community services restored. Their efforts materially helped hard-hit communities recover functionality more quickly.

Respectfully submitted,

**CENTURYLINK**

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